

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 982 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL  
and  
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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BEN LILAVATI LALBHAI TRUST THROUGH TRUSTEES  
Versus

A'BAD MUNICIPAL CORPORATION  
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Appearance:

MR PV NANA VATY for Petitioners  
MR PRASHANT G DESAI for Respondent No. 1  
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CORAM : MR.JUSTICE B.C.PATEL  
and  
MR.JUSTICE C.K.BUCH

Date of decision: 03/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. The petitioner has prayed for appropriate writ, order or direction in the nature of mandamus to the respondent - Ahmedabad Municipal Corporation to hand over possession of land admeasuring 306 sq. yds. of Final Plot 207 of Town Planning Scheme No. 8 of Dariapur-Kazipur, Taluka City, District Ahmedabad. As averred by the petitioner under the provisions contained in the Bombay Town Planning Act, Town Planning Scheme No. 8 of Dariapur-Kazipur was framed by the then Borough Municipality of Ahmedabad. The said survey nos. 66 and 67 were allotted Original Plot no. 173 under the said Scheme. On the reconstitution of the said plots, the original plot no. 173 was divided and has been given final plot nos. 205 and 207 admeasuring 15683 sq. yds. Some part of the said original plot no. 173 of land admeasuring 6178 sq. yds. was allocated for the purpose of constructing the road. As per the Scheme, the final plot no. 205 admeasures 8989 sq. yds. and final plot no. 207 admeasures 6694 sq. yds. The land admeasuring 8989 sq. yds. being final plot no. 205 was sold to Navkund Cooperative Housing Society Limited. The plots of land admeasuring 3626 sq. yds. and 1910 sq. yds. were sold to different individuals. The land admeasuring 152 sq. yds. on reconstitution of the final plot of the said Scheme was allotted final plot no. 207 and thus, the final plot no. 207 was admeasuring 6694 sq. yds. It is specifically averred in the petition that out of the said area of 6694 sq. yds. the Municipal Corporation has not still handed over possession of land admeasuring 3068 sq. yds. On behalf of the Corporation, an affidavit is filed by the Deputy Estate Officer. It is pointed out in para 5 that original survey nos. 66 and 67(1) to which original plot no. 173 was given under the Town Planning Scheme No. 8 admeasuring 1887 sq. yds. was of Jivanlal Maganlal and Himatlal Maganlal. They were lessors and on permanent lease, it has been given to Lilavatiben Lalbhai in their personal capacity. This is stated from the record available. It is not disputed that the entire plot of newly constituted final plot no. 207 is not handed over. In the map annexed with the affidavit, it is pointed out that out of final plot no. 207, some portion is yet not handed over, which is marked with blue lines. Mr. Desai fairly stated that in view of the Supreme Court judgment in the case of Municipal Corporation of Greater Bombay v. The Advance Builders (India) Pvt. Ltd., reported in AIR 1972 SC 793, it is the duty of the Corporation to hand over possession of the plot not with encroachment but it is the duty of the Corporation to put the person in possession of a plot which is vacant one. In para 12, the Court has observed as under.

"12. It is clear, therefore, on a consideration of the provisions of the Bombay Town Planning Act, 1954 and especially the sections of that Act referred to above, that the Corporation is exclusively entrusted with the duty of framing and implementation of the Planning Scheme and, to that end, has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act. It has been long held that, where a statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the statute requires to be done."

#. Is under these circumstances, we direct the Corporation to implement the scheme in its spirit and hand over vacant possession of the part of the land of final plot no. 207 as claimed in the petition and as pointed out in the sketch within a period of six months. The petition is allowed. Rule is made absolute with no order as to costs.

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